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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,632	05/18/2004	Roger A. Arquilla	RA01	3631
27797	7590	02/24/2005	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/709,632

Applicant(s)

ARQUILLA, ROGER A. *en*

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-11, 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-16, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: Figs. 1 and 2; Fig. 3.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-8 and 16 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Richard Fuerle on 26 January 2005 a provisional election was made with traverse to prosecute the invention of Fig. 3, claims 1-8, 12-16, 19-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-11, and 17-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the beveled edges as set forth in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Cited reference US 2,645,375 shows beveled edges on the caps a2 and on the top of the threads. The present invention does not show any edge bevels. Rounded edges are shown.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 12 is objected to because of the following informalities: Claim 12 introduces confusion as to the number of compartments claimed, and whether the compartments of claim 12 correspond to the compartments of claim 1. The Examiner suggests that claim 12 delete the "each forming a compartment" and instead recite "a first sub container forming said single first compartment for holding a liquid, and at least two second sub-containers each forming one of said at least one second compartments and for holding pills." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,8,12, and13 are rejected under 35 U.S.C. 102(b) as being anticipated by Stolte, US 2,631,747.

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Stolte discloses the claimed invention of first, second, and third compartments that are capable of being used for the intended purpose of holding a drink and of holding pills, the containers are square in cross-section having flat ends, and include a means (closure 17) for separately accessing and sealing each compartment. The compartments are also linearly aligned. The containers are made of plastic, and may be transparent (see col. 3 lines 1-5). The containers are also shown manufactured in different sizes (see Fig. 2, and col. 4 lines 1-5). The containers are also capable of being written on (notice the printed material on the containers).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,4, and 16 are ejected under 35 U.S.C. 103(a) as being unpatentable over Ross, US 6,419,081 in view of: Lynd, D324,173; Wakao US 5,388,698; Stolte, US 2,631,747; and Official Notice.

Ross discloses the first and second linearly aligned compartments, means for sealing the compartments comprising screw on caps (Col. 3 lines 14-17), and the method of taking pills as claimed. Ross further discloses in Col. 4, first paragraph, that the cylindrical housing may be constructed of two pieces which would allow the housing to be separated at the compartment separator by a screw thread. And, Ross discloses flat ends.

With respect to claims 1,4,6 and 16, Ross does not show a rectangular or square cross-section.

Lynd specifically discloses drawing figures showing how the embodiment that Ross discloses in Col. 4, first paragraph, with the cylindrical housing constructed of two pieces which allows the housing to be separated at the compartment separator by a screw thread could be produced.

Wakao, discloses in Figs. 20-23 a small portable pill container having a roughly rectangular cross section with two distinct opposing flat sides. The shape disclosed in this embodiment is shown as an alternative to round cross-sectional shape shown in previous embodiments in his patent. The shape of the pill container of Wakao has corresponding benefits in appearance and ergonomics due to the cross-sectional shape. Like Ross, the container of Wakao is disclosed for portable use, and is also specifically designed to be capable of containment in a shirt pocket.

Stolte teaches how square containers having round openings could be utilized in an arrangement such as is disclosed by Ross where there are more than one compartment, and the separate compartments are linearly aligned.

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Additionally, the Examiner takes Official Notice that it is well known to make containers with flat sides so as to minimize the potentiality of rolling.

Accordingly, it would have been obvious at the time of the invention to one of ordinary skill in the art to modify the container of Ross to include a square cross-section so that the container will not roll, will be easy to grasp, and will have a desired aesthetic attractiveness.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross, US 6,419,081 in view of: Lynd, D324,173; Wakao US 5,388,698; Stolte, US 2,631,747; and Official Notice.

With respect to claims 2 and 3, Ross does not explicitly disclose the use of plastic or transparent materials.

Stolte discloses containers made of plastic, and which also may be transparent (see col. 3 lines 1-5).

Additionally, the Examiner takes Official Notice that it is obvious to one of ordinary skill in the art to manufacture pill containers from transparent plastic as plastic is the common material used for pill containers due to its durability, low cost, and ease of being manufactured into containers suitable for pills. Additionally, the use of transparency in plastic containers used in medicine or pill containers is well known. The benefit of transparency are the ability of the user to be able to identify the type of pill held in the container and the number of pills in a container without the necessity of opening the container for these purposes.



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Accordingly, it would have been obvious at the time of the invention to one of ordinary skill in the art to modify the container of Ross with the teachings of Lynd, D324,173; Wakao US 5,388,698; Stolte, US 2,631,747; and Official Notice so as to provide a low cost pill container with the additional desirable benefit of ease of pill identification.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross, US 6,419,081 in view of: Lynd, D324,173; Wakao US 5,388,698; Stolte, US 2,631,747; and Official Notice.

With respect to claims 5, the size of the container of Ross is not given explicitly. However, Ross discloses that his container is sized to fit into a shirt pocket. From this information, it can be reasoned that the length of the container of Ross is likely between 3 and 6 inches, as the depth of a shirt pocket is typically between 4 and 5 inches. The diameter of the container of Ross is approximately one quarter of the height, and accordingly, the width of the container of Ross is likely between three quarters of an inch and 1 and one half inches.

Additionally, it is known that pill containers and liquid vessels used for taking pills are manufactured in a variety of sizes to accommodate different needs, such as when a patient is taking multiple pills, or taking one or more very large pills. It is also known that pill containers are manufactured in a variety of sizes to accommodate different sizes of pills and different amounts of pills.

Furthermore, with respect to the claimed dimensions, none of the dimensions are disclosed as being critical to the operation of the present invention. Nor, is it disclosed

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how dimensions other than those provided would be unsuitable to practice the invention. See also Gardner v. TEC Systems, Inc. as cited in MPEP 2144.04.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the container of Ross with a width of about  $\frac{1}{2}$  to  $1\frac{1}{2}$  inches and a length between 3 and 6 inches, so as to provide a portable pill container that can be easily carried by the pill user, such as in a shirt pocket, and to accommodate the various individual needs of the user such as amount of pills to be carried, amount of liquid needed to consume the pills, etc.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross, US 6,419,081 in view of Lynd, D324,173, Wakao US 5,388,698, Stolte, US 2,631,747, and Official Notice, and further in view of Halbich, US 4,793,492.

Ross in view of Lynd, Wakao, Stolte, and Official Notice, does not explicitly disclose the provision of a writable surface on the container.

Halbich discloses in Col 4, lines 42-44 that roughened plastic can be used to provide a writable surface.

Accordingly, it would have been obvious to one of ordinary skill in the art to have made the container of Ross with writable surfaces so as to provide information on the container such as the amount of pills to be taken, when the pills need to be taken, etc.

Claims 7, 12, 13, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross, US 6,419,081 in view of Lynd, D324,173, Wakao US 5,388,698, Stolte, US 2,631,747, and Official Notice, and further in view of Topfer US 2,645,375.

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With respect to claims 7, 12, 13, 15 and 19, Ross in view of Lynd, Wakao, Stolte, and Official Notice, discloses a single pill container.

Topfer discloses how multiple pill containers (col. 1 line 7) can be provided, where each of the containers screw into another container, and where multiple pill containers can be attached to a larger container such as shown in Fig. 7.

The container of Ross as is disclosed in Col. 4, and as has been exemplified by Lynd, easily accommodates the teaching of Topfer of multiple pill containers, where each of the containers screw into another container.

Accordingly, it would have been obvious to one of ordinary skill in the art to have made the container of Ross in view of Lynd, Wakao, Stolte, and Official Notice with a single pill container with multiple pill containers as taught by Topfer, as it is known that many pharmaceutical regimens require the user to take a multiplicity of pills, and that storing the pills in individual containers has the benefit of providing easy access to the desired pills.

Topfer additionally discloses beveled edges, which provide ergonomic benefits to the user as well as making the container less likely to cut skin.

Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross, US 6,419,081 in view of Lynd, D324,173, Wakao US 5,388,698, Stolte, US 2,631,747, and Official Notice, further in view of Topfer US 2,645,375, and further in view of Maze US 5,238,140.

With respect to claims 14 and 20 Ross also does not provide actual volumes of his compartments. However, Maze provides a size of 5 oz., which is about 150 ml.

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Accordingly, Maze provides a teaching as to the proper size of the liquid container of Ross. The claims set forth that the ratio of size of each pill compartment to the liquid compartment is roughly  $1/6$  (25/150) to  $1/3$  (40/120). Ross clearly discloses a ratio within this range.

Additionally, it is known that pill containers and liquid vessels used for taking pills are manufactured in a variety of sizes to accommodate different needs, such as when a patient is taking multiple pills, or taking one or more very large pills. It is also known that pill containers are manufactured in a variety of sizes to accommodate different sizes of pills and different amounts of pills.

Furthermore, with respect to the claimed dimensions, none of the dimensions are disclosed as being critical to the operation of the present invention. Nor, is it disclosed how dimensions other than those provided would be unsuitable to practice the invention. See also *Gardner v. TEC Systems, Inc.* as cited in MPEP 2144.04.

Accordingly, it would have been obvious to one of ordinary skill in the art to have made the container of Ross in view of Lynd, Wakao, Stolte, Official Notice, and Topfer with the size teachings of Maze with the sizes as set forth in claims 14 and 16 as to accommodate the individual needs of the intended user.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jdj



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